

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CA CR 05-980

August 30, 2006

CEDRIC LOVE

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
PULASKI COUNTY
[NO. CR 2004-463]

V.

HONORABLE BARRY ALAN SIMS,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

A jury in Pulaski County found appellant, Cedric Love, guilty of being a felon in possession of a firearm. Love now appeals this conviction and his twenty-year sentence as an habitual offender, arguing only that the evidence is insufficient to support the verdict. We affirm, as there is substantial evidence to support the conviction.

On November 19, 2003, officers from the Sherwood Police Department responded to a disturbance call at an apartment complex located at 111 Mason Road. The complainant, Dana Jones, directed the officers to a burgundy Chevrolet Lumina, which was stopped by Officer Beverly Hughes. Appellant was the driver of this vehicle and its sole occupant. Hughes ran a check on appellant through the ACIC and NCIC data bases and found that there were no outstanding warrants for appellant's arrest, but she did learn that appellant's driver's license had been suspended. She then issued appellant a ticket for driving on a suspended license and for driving without wearing a seat belt. She told appellant that he was free to leave, but that she was going to impound the vehicle.

Officer Jerry Bradford assisted Officer Hughes at the traffic stop and in conducting an inventory of the impounded vehicle. Officer Ray Hogan alerted Bradford that Ms. Jones had advised

that a weapon was in the vehicle. Bradford understood that the weapon was located behind the radio somewhere in the dash, but he did not find anything. Officer Hogan arrived. In the center console there was a “change cubby hole” which, when grabbed, easily “popped right out,” exposing a Taurus .45 automatic that was fully loaded with hollow-point ammunition. There was also a spare magazine with the gun. Officer Bradford agreed that the weapon was located “right there for the driver.” No fingerprints were taken from the weapon, and it was not registered to anyone.

Knowing that appellant was a convicted felon, the officers set about to find him. Officer Hughes was stopped by the driver of a garbage truck, who told her that a black male had ducked down in some weeds when Hughes had driven down Warden Road. She went back to that area and spotted appellant in a parking lot. She said that she was not speeding and had not activated her blue lights when she saw appellant and yelled for him to stop. She said that appellant took off running across Warden Road and then across both lanes of the 67/167 expressway, causing vehicles in the heavy morning traffic to slam on their brakes and swerve to avoid hitting him. Appellant ran into an open field and scaled a fence into Bradford Marine. Appellant jumped another fence, but was apprehended inside the second fence.

Ms. Jones testified that she had previously been in a relationship with appellant, who had fathered her two children. She said that she called 911 because appellant had made harassing phone calls and had said that he was going to kill her “because she had company.” She testified that she told the officers about the location of the gun because she was afraid. Although she had never seen this particular weapon, she said that appellant’s ex-girlfriend had told her about it. She had heard that the Lumina was registered to appellant’s brother and the brother’s girlfriend. She testified that appellant was the only driver of the vehicle that she knew of and that it was his car. Ms. Jones denied asking appellant to come over that morning, and she denied that she had planted the gun in the car.

Appellant testified that Ms. Jones had been angered because he had left her for an older woman and that she had threatened him, saying that if she could not have him then no one could.

He said that Ms. Jones constantly harassed him and had flattened his tires and those on his girlfriend's vehicle. Appellant testified that she had called him that morning to come get their boys because she was hemorrhaging and needed to go to the doctor. Appellant explained that he ran from the police because there was a warrant for his arrest stemming from his failure to appear in court on a charge of driving on a suspended license. He said that the Lumina was the vehicle he drove back and forth to work and that he knew nothing about the gun. He said that he would not possess a weapon because he had once been convicted of being a felon in possession of a firearm.

It is unlawful for a person convicted of a felony to possess a firearm. Ark. Code Ann. § 5-73-103(a)(1) (Repl. 2005). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Cummings v. State*, 353 Ark. 618, 110 S.W.3d 272 (2003). We affirm a conviction if substantial evidence exists to support it. *Reed v. State*, 353 Ark. 22, 109 S.W.3d 665 (2003). Evidence is substantial when it is forceful enough to compel a conclusion and goes beyond mere speculation or conjecture. *Cherry v. State*, 80 Ark. App. 222, 95 S.W.3d 5 (2003).

Noting that the vehicle was registered in the names of others, appellant maintains that there was joint occupancy of the vehicle which, standing alone, is not sufficient to establish possession without other factors linking him to the contraband. *See Kilpatrick v. State*, 322 Ark. 728, 912 S.W.3d 917 (1995). He contends that there is insufficient evidence of those other factors linking him to the firearm. In *Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002), however, the supreme court held that, where there is a single occupant in a borrowed car or car owned by another, the State need only prove constructive possession of the contraband without including any inquiry into the elements of joint occupancy. In order to prove constructive possession, the State must establish beyond a reasonable doubt: (1) that the defendant exercised care, control, and management over the contraband; and (2) that he knew that the matter possessed was contraband. *Ewings v. State*, 85 Ark. App. 411, 155 S.W.3d 715 (2004). Constructive possession may be implied where the contraband is found in a place immediately and exclusively accessible to the accused and subject to his control.

Polk v. State, supra. Constructive possession may be established by circumstantial evidence, but when such evidence alone is relied on for conviction, it must indicate guilt and exclude every other reasonable hypothesis. *Id.*

In this case, appellant was the lone occupant of a vehicle that he was known to be the primary driver of and which he, himself, admitted that he drove on a routine basis. The weapon was concealed in an area immediately accessible to appellant, and its location was known by others close to the appellant. Appellant had earlier been convicted of felon in possession of a firearm, which tends to explain why the weapon was concealed so craftily. Although there was testimony that there were no warrants for his arrest, appellant fled when he was approached by Officer Hughes. Evidence of flight to avoid arrest may be considered by the jury as corroborative of guilt. *Williams v. State*, 347 Ark. 728, 67 S.W.3d 548 (2002). Although appellant provided an explanation for his flight and denied that he had any knowledge of the weapon, decisions regarding the credibility of witnesses are for the jury, and the jury is not required to believe any witness's testimony especially the testimony of the accused, because he is the person most interested in the outcome of trial. *Winbush v. State*, 82 Ark. App. 365, 105 S.W.3d 789 (2003). In addition, a jury may consider and give weight to any false, improbable, and contradictory statements made by the defendant to explain suspicious circumstances. *Ewings v. State, supra.* We hold that there is substantial evidence to support the jury's finding that appellant was in possession of the firearm.

Affirmed.

ROBBINS and GRIFFEN, JJ., agree.

